

**CITY OF SAN DIEGO
ETHICS COMMISSION**

M E M O R A N D U M

DATE: December 5, 2005

TO: Chair and Members of the San Diego Ethics Commission

FROM: Stephen Ross, Program Manager

SUBJECT: Summary of the California Coastal Commission's Ex Parte Communication Laws

This memorandum contains a summary of the provisions of the California Public Resources Code that pertain to ex parte communications between members of the Coastal Commission and interested parties. After the summary, the most relevant code sections are set forth in full, followed by an excerpt from the Coastal Commission's website on the subject of ex parte communication requirements.

A. Public Resources Code Summary

Under sections 30319 to 30329 of the California Public Resources Code, ex parte communications between members of the California Coastal Commission and "interested parties" are subject to public disclosure. These laws impose disclosure requirements on the commissioners as well as on permit applicants. On one hand, anyone applying for a Coastal Commission development permit must provide the Commission with the names and addresses of all persons who will be compensated for communicating with the commission or commission staff on behalf of the applicant or the applicant's business partners. On the other hand, if a Commission member engages in an ex parte communication with an interested party, the Commission member must make that communication public by disclosing it in a written report to the Commission's executive director within seven days. If the communication takes place within seven days of a Commission hearing, the member must make the disclosure on the record. The disclosure must contain the date, time, and location of the communication, as well as the identities of the persons involved in the communication, and a complete description of the content of the communication.

An ex parte communication is defined as any oral or written communication between a member of the Commission and an interested person about a matter within the Commission's jurisdiction that does not occur in a public hearing, workshop, or other official proceeding, or on the official record. Under section 30322, communications subject to these disclosure rules do not include (1) communications between a Commission member's staff and an "interested party"; (2) communications limited entirely to procedural issues; (3) communications that take place on the record of an official proceeding; (4) communications between Commission members and officials of other state or local agencies with regard to actions of those agencies; (5) communications between a nonvoting member of the Commission and a staff member of a state

agency; and (6) communications with a nonvoting member of the Commission with regard to matters in which that member does not participate.

“Interested person” is defined as: (a) any applicant, agent, or employee of the applicant, or any person participating in a proceeding on any matter before the Commission; (b) any person with a financial interest in a matter before the Commission; and (c) any representative of an organization who intends to influence the decision of a Commission member on a matter before the Commission.

If there is a violation with regard to the above disclosure requirements, section 30328 provides that any “aggrieved person” (defined to mean any person who appeared at a public hearing of the Commission in connection with the decision or action appealed, or who informed the Commission of the nature of his or her concerns, or who for good cause was unable to do either) may seek a writ of mandate from a court requiring the Commission to revoke its action and rehear the matter.

In addition, under section 30327, a Commission member may be fined up to \$7,500 for participating in, or attempting to influence, a Commission decision about which the member knowingly had an ex parte communication that was not reported. Also, if an applicant fails to comply with the disclosure requirements under section 30319, he or she may be subject to a \$5,000 fine or imprisonment.

B. Key Provisions of the California Public Resources Code

California Public Resources Code § 30319

Any person who applies to the commission for approval of a development permit shall provide the commission with the names and addresses of all persons who, for compensation, will be communicating with the commission or commission staff on the applicant's behalf or on behalf of the applicant's business partners. That disclosure shall be provided to the commission prior to any such communication. Failure to comply with that disclosure requirement is a misdemeanor and, upon conviction, the person shall be punished by a fine of five thousand dollars (\$5,000) or imprisonment in the county jail not exceeding six months, and, in addition, shall be subject to immediate denial of the permit.

California Public Resources Code § 30322

- (a) For purposes of this article, except as provided in subdivision (b), an “ex parte communication” is any oral or written communication between a member of the commission and an interested person, about a matter within the commission's jurisdiction, which does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.
- (b) The following communications are not ex parte communications:
 - (1) Any communication between a staff member acting in his or her official capacity and any commission member or interested person.

- (2) Any communication limited entirely to procedural issues, including, but not limited to, the hearing schedule, location, format, or filing date.
- (3) Any communication which takes place on the record during an official proceeding of a state, regional, or local agency that involves a member of the commission who also serves as an official of that agency.
- (4) Any communication between a member of the commission, with regard to any action of another state agency or of a regional or local agency of which the member is an official, and any other official or employee of that agency, including any person who is acting as an attorney for the agency.
- (5) Any communication between a nonvoting commission member and a staff member of a state agency where both the commission member and the staff member are acting in an official capacity.
- (6) Any communication to a nonvoting commission member relating to an action pending before the commission, where the nonvoting commission member does not participate in that action, either through written or verbal communication, on or off the record, with other members of the commission.

California Public Resources Code § 30323

For purposes of this article, an "interested person" is any of the following:

- (a) Any applicant, an agent or an employee of the applicant, or a person receiving consideration for representing the applicant, or a participant in the proceeding on any matter before the commission.
- (b) Any person with a financial interest, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest.
- (c) A representative acting on behalf of any civic, environmental, neighborhood, business, labor, trade, or similar organization who intends to influence the decision of a commission member on a matter before the commission.

California Public Resources Code § 30324

- (a) No commission member, nor any interested person, shall conduct an ex parte communication unless the commission member fully discloses and makes public the ex parte communication by providing a full report of the communication to the executive director within seven days after the communication or, if the communication occurs within seven days of the next commission hearing, to the commission on the record of the proceeding at that hearing.

- (b) (1) The commission shall adopt standard disclosure forms for reporting ex parte communications which shall include, but not be limited to, all of the following information:
 - (A) The date, time, and location of the communication.
 - (B) The identity of the person or persons initiating and the person or persons receiving the communication.
 - (C) A complete description of the content of the communication, including the complete text of any written material that was a part of the communication.
- (2) The executive director shall place in the public record any report of an ex parte communication.
- (c) Communications shall cease to be ex parte communications when fully disclosed and placed in the commission's official record.

California Public Resources Code § 30325

Nothing in this article prohibits any person or any interested person from testifying at a commission hearing, workshop, or other official proceeding, or from submitting written comments for the record on a matter before the commission. Written comments shall be submitted by mail or delivered to a commission office, or may be delivered to the commission at the time and place of a scheduled hearing.

California Public Resources Code § 30327

- (a) No commission member or alternate shall make, participate in making, or any other way attempt to use his or her official position to influence a commission decision about which the member or alternate has knowingly had an ex parte communication that has not been reported pursuant to Section 30324.
- (b) In addition to any other applicable penalty, including a civil fine imposed pursuant to Section 30824, a commission member who knowingly violates this section shall be subject to a civil fine, not to exceed seven thousand five hundred dollars (\$7,500). Notwithstanding any law to the contrary, the court may award attorneys' fees and costs to the prevailing party.

California Public Resources Code § 30328

If a violation of this article occurs and a commission decision may have been affected by the violation, an aggrieved person, as described in Section 30801, may seek a writ of mandate from a court requiring the commission to revoke its action and rehear the matter.

C. Ex Parte Communication Requirements (Excerpt from Coastal Commission website)

As of January 1, 1993, significant new ex parte requirements affecting communications with Commissioners went into effect. (Public Resources Code, sections 30319-30324.) These stringent new provisions of law may have serious consequences. **Anyone** wishing to communicate with a Commissioner about any matter pending before the Commission should read and abide by the guidelines below. The following guidance covers **most** of the new requirements.

No written materials should be sent to Coastal Commissioners **unless** the Commission staff receives copies of all of the same materials at the same time.

All materials transmitted to Commissioners should clearly indicate (e.g., on the cover page or envelope) that they have also been forwarded to the staff. Materials that do not show that copies have been provided to staff might not be accepted, opened or read by Commissioners. In these cases, **no** ex parte communication has occurred.

Messages of a non-procedural nature (e.g., substantive) should **not** be left for a Commissioner. These include telephone, FAX, telegraphic or other forms of message.

All oral or written communications of a non-procedural nature by an "interested person" that are **not** made according to the above procedures are ex parte communications which are prohibited unless publicly reported by the Commissioner. If the Commissioner does not report the communication, the Commission's action that was the subject of the communication may be revoked and penalties may result.

Coastal Commission decisions must be made on the basis of information available to all commissioners and the public. Therefore, copies of communications made to Commissioners that are forwarded to staff will be included in the public record. Public records are available for inspection at Commission meetings or in the Commission's office.